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8 Sciences, Inc.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 NATIONAL ACADEMY OF
13 RECORDING ARTS & SCIENCES, INC.,
a Delaware corporation,

14 Plaintiff,

15 v.

16 POWER MUSIC, INC., a Nevada
17 corporation,

18 Defendant.
19

Case No. 2:15-cv-6889

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff National Academy of Recording Arts & Sciences, Inc. (“The
2 Recording Academy®”), by its attorneys, Proskauer Rose LLP, for its complaint
3 against defendant Power Music, Inc. (“Power Music” or “Defendant”), alleges as
4 follows:

5 **NATURE OF THE ACTION**

6 1. This is a complaint for trademark infringement, unfair competition, false
7 advertising and trademark dilution in violation of the Lanham Act, 15 U.S.C. §§ 1051
8 *et seq.* and trademark infringement, trademark dilution, false advertising, and unfair
9 or deceptive business practices under state law arising out of Defendant Power
10 Music’s unauthorized marketing and sale of various “GRAMMY Tribute” albums,
11 including among others the recent albums entitled, “GRAMMY Tribute Workout
12 Mix 2015,” “GRAMMY Tribute Workout Mix 2014,” and “GRAMMY Tribute
13 Workout Mix 2013.”

14 **THE PARTIES**

15 2. The Recording Academy is a Delaware not-for-profit corporation with
16 its principal place of business located at 3030 Olympic Boulevard, Santa Monica,
17 California 90404. The Recording Academy has over 18,000 members. For more than
18 50 years The Recording Academy has represented the individuals who contribute to
19 the creation and exploitation of recorded music, including recording artists,
20 musicians, songwriters and record producers. Among other activities, The Recording
21 Academy presents the GRAMMY® Awards, the only peer-presented awards that
22 honor artistic achievement in the music industry. The Recording Academy is the
23 owner of the trademark GRAMMY®.

24 3. On information and belief, Defendant Power Music, Inc. is a Nevada
25 corporation with its principal places of business located at 112 North Curry Street,
26 Carson City, Nevada 89701 and at 380 North 200 West #105, Bountiful, Utah 84010.
27 Upon further information and belief, Power Music, Inc. creates and produces
28

1 pre-recorded music media and music downloads, which it sells throughout the United
2 States, including in California.

3 4. Defendant is not affiliated with The Recording Academy, and The
4 Recording Academy has not consented to, sponsored, endorsed, or approved of
5 Defendant's use of the GRAMMY trademark in connection with the production,
6 marketing, or sale of any products or services.

7 **JURISDICTION AND VENUE**

8 5. This action arises under the Lanham Act, a federal statute codified at 15
9 U.S.C. §§ 1051, *et seq.*, and California state law.

10 6. This Court has subject matter jurisdiction over this action pursuant to 15
11 U.S.C. § 1121(a), and 28 U.S.C. §§ 1331, 1332(a)(1), and 1338(a). This Court has
12 supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §§ 1338(b)
13 and 1367(a).

14 7. The Recording Academy is informed and believes, and on that basis
15 alleges, that this Court has personal jurisdiction over Defendant because (i) Power
16 Music, Inc. is registered to do business in California and has an office located at 1660
17 Queens Road, Los Angeles, CA 90069; (ii) Defendant conducts business within the
18 State of California and this judicial district; (iii) Defendant has caused its products to
19 be advertised, promoted, and sold under the GRAMMY trademark within the State of
20 California and this judicial district; (iv) the causes of action asserted in this Complaint
21 arise out of Defendant's contacts with the State of California and this judicial district;
22 and (v) Defendant has caused tortious injury to The Recording Academy in the State
23 of California and this judicial district.

24 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
25 and (c) because (i) Power Music, Inc. is registered to do business in California and has
26 an office located at 1660 Queens Road, Los Angeles, CA 90069; (ii) Defendant
27 conducts business within the State of California and this judicial district; (iii)
28 Defendant has caused its products to be advertised, promoted, and sold under the

1 GRAMMY trademark within the State of California and this judicial district; (iv) the
2 causes of action asserted in this Complaint arise out of Defendant's contacts with the
3 State of California and this judicial district; (v) Defendant has caused tortious injury
4 to The Recording Academy in the State of California and this judicial district.

5 **FACTS COMMON TO ALL COUNTS**

6 **The Recording Academy and the Grammy Trademark**

7 9. The Recording Academy has celebrated music through the GRAMMY
8 Awards for more than 50 years, and it is the premier outlet for honoring achievements
9 in the recording arts and supporting the music community. The annual GRAMMY
10 Awards presentation brings together thousands of creative and technical professionals
11 in the recording industry from all over the world.

12 10. Achieving a GRAMMY nomination or GRAMMY Award has been the
13 highest recognition of achievement for sound recording artists and professionals since
14 the first awards were presented in May 1959 to recognize musical excellence in works
15 released the previous year. From the inception of the awards ceremony, the glamour
16 and prestige associated with the GRAMMY name has been undeniable, as Frank
17 Sinatra led the pack of nominees with six nominations and many of music's elite were
18 in attendance at the ceremony that evening, including Sinatra, Sammy Davis Jr., Dean
19 Martin, and Gene Autry.

20 11. Today, the GRAMMY Awards is an internationally televised event,
21 which attracts over 25 million viewers annually. Recipients of GRAMMY Awards at
22 the most recent ceremony held in February 2015 include some of the biggest names in
23 the music business, including Jay-Z, Beyonce, Tony Bennett, Lady Gaga, Carrie
24 Underwood, Miranda Lambert, Eminem and Rihanna, to name a few.

25 12. Bestowing a prestigious GRAMMY Award on artists and other industry
26 professionals is not the only way in which The Recording Academy uses the
27 GRAMMY mark to achieve its mission to positively impact the lives of musicians,
28 industry members and society at large. The Recording Academy achieves this goal

1 not only through recognizing the best in music through the GRAMMY Awards, but
2 also by establishing itself as one of the preeminent arts advocacy and outreach
3 organizations, which it accomplishes through GRAMMY-branded affiliates such as
4 the GRAMMY Foundation and the GRAMMY Museum, among other affiliates,
5 including MusiCares.

6 13. The Recording Academy has used the mark GRAMMY in commerce
7 continuously since at least 1959 and owns numerous trademark registrations for the
8 term “GRAMMY.”

9 14. Among other registrations, The Recording Academy owns the following
10 registrations (collectively, the “GRAMMY Registrations”):

11 a. U.S. Trademark Registration No. 887,642 (first use 1959), which
12 the United States Patent & Trademark Office (“PTO”) issued to The
13 Recording Academy on March 10, 1970 for use in connection with
14 association services, namely, promoting artistic progress and achievement
15 in the field of recording arts and sciences. A true and correct copy of this
16 registration certificate is attached as Exhibit A;

17 b. U.S. Trademark Registration No. 1,865,177 (first use February 1,
18 1994), which the PTO issued to The Recording Academy on November 29,
19 1994, for use in connection with, among other things, audio compact discs
20 and video tapes featuring musical entertainment. A true and correct copy
21 of this registration certificate is attached as Exhibit B; and

22 c. U.S. Trademark Registration No. 2,332,258 (first use 1958),
23 which the PTO issued to The Recording Academy on March 21, 2000, for
24 use in connection with educational services, namely, providing incentives
25 to people to demonstrate excellence in the field of music and video arts and
26 sciences through the issuance of awards. A true and correct copy of this
27 registration certificate is attached as Exhibit C.
28

1 15. The GRAMMY Registrations are in full force and effect on the PTO's
2 Principal Register and give rise to presumptions in favor of The Recording Academy
3 with respect to validity, ownership, and exclusive rights to use the GRAMMY mark
4 throughout the United States. Moreover, the GRAMMY Registrations have become
5 incontestable pursuant to 15 U.S.C. § 1065.

6 16. As a result of The Recording Academy's extensive use of the
7 GRAMMY mark nationwide over a period of more than 50 years, significant
8 expenditure of resources to advertise and promote services and goods sold nationwide
9 in a broad variety of trade channels in connection with the GRAMMY mark, and the
10 undeniable popularity of the annual GRAMMY Awards ceremony and telecast, the
11 GRAMMY trademark has a high degree of consumer recognition and has become
12 famous.

13 **The Annual GRAMMY Awards Tribute Album**

14 17. Since 1995, in the weeks leading up to the annual GRAMMY Awards
15 ceremony, The Recording Academy has released an annual GRAMMY nominees
16 album, featuring a compilation of that year's popular sound recordings that
17 correspond to the songs, records, performances and albums nominated for a
18 GRAMMY Award (the "Annual GRAMMY Nominees Album").

19 18. The Recording Academy released the most recent Annual GRAMMY
20 Nominees Album on January 20, 2015, less than three weeks before the 57th Annual
21 GRAMMY Awards ceremony held on February 8, 2015. Attached as Exhibit D is a
22 copy of the cover for the 2015 Annual GRAMMY Nominees Album.

23 19. The 2015 Annual GRAMMY Nominees Album features the
24 chart-topping sound recordings corresponding to nominations for Record of the Year,
25 Song of the Year, Best Pop Solo Performance, and Album of the Year, among others.
26 In all, the album features the following 21 tracks:

27 Taylor Swift, Shake It Off

28 Iggy Azalea feat. Charli XCX, Fancy

- 1 Ed Sheeren, Sing
- 2 Ariana Grande feat. Iggy Azalea, Problem
- 3 Meghan Trainor, All About That Bass
- 4 Katy Perry feat. Juicy J, Dark Horse
- 5 Coldplay, A Sky Full of Stars
- 6 Miley Cyrus, Wrecking Ball
- 7 Sia, Chandelier
- 8 John Legend, All of Me (Live)
- 9 Hozier, Take Me to Church
- 10 Beyoncé feat. Jay Z, Drunk in Love
- 11 Pharrell Williams, Come Get It Bae
- 12 Sam Smith, Stay with Me (Dark Child Version)
- 13 Beck, Blue Moon
- 14 Keith Urban feat. Eric Church, Raise ‘Em Up
- 15 The Band Perry, Gentle on My Mind
- 16 Tim McGraw feat. Faith Hill, Meanwhile Back at Mama’s
- 17 Miranda Lambert with Carrie Underwood, Somethin’ Bad (Duet With Carrie
- 18 Underwood)
- 19 Little Big Town, Day Drinking
- 20 Pharrell Williams, Happy (Live)

21 20. Annual GRAMMY Nominees Albums were also released in 2014 and
22 2013 to coincide with the telecast of the annual GRAMMY Awards ceremony, and
23 they similarly feature the sound recordings corresponding to nominations for those
24 respective years. Attached as Exhibits E and F are copies of the covers for the 2014
25 and 2013 Annual GRAMMY Nominees Albums.

26 21. The Annual GRAMMY Nominees Album is available for purchase
27 online and in retail stores nationwide, including from iTunes, Amazon, BestBuy, and
28 Target, among others. Attached as Exhibits G, H, and I are copies of the 2015, 2014

1 and 2013 Annual GRAMMY Nominees Albums as available for download on
2 iTunes.

3 **Defendant's Use of the GRAMMY mark**

4 22. Defendant is well aware of the popularity and fame of The Recording
5 Academy's GRAMMY trademark and the goodwill represented and symbolized by
6 the mark.

7 23. Nevertheless, with full awareness of that popularity, fame, and goodwill,
8 Defendant has undertaken unfairly and in bad faith to use the GRAMMY trademark
9 for the purpose of drawing attention to Defendant's products.

10 24. Specifically, Defendant has been unfairly marketing, distributing, and
11 selling "GRAMMY Tribute" albums, which directly infringe The Recording
12 Academy's GRAMMY trademark and trade off the popularity of The Recording
13 Academy's Annual GRAMMY Nominees Album.

14 25. Earlier this year defendant began to distribute an album titled
15 "GRAMMY Tribute Workout Mix 2015," which is available for sale on iTunes,
16 Amazon, and workoutmusic.com. Attached as Exhibit J is a copy of the cover of the
17 "GRAMMY Tribute Workout Mix 2015."

18 26. The GRAMMY mark is the first, largest, and most prominent word on
19 the cover of the Power Music "GRAMMY Tribute Workout Mix 2015" album,
20 claiming, or at a minimum suggesting, sponsorship by or affiliation with The
21 Recording Academy.

22 27. Upon information and belief, Power Music released GRAMMY Tribute
23 Workout Mix 2015 on February 3, 2015, which is just two weeks after the 2015
24 Annual GRAMMY Nominees Album was released and less than a week prior to the
25 57th Annual GRAMMY Awards ceremony, which was held on February 8, 2015. The
26 timing of this release was not coincidental: Power Music released GRAMMY
27 Tribute Workout Mix 2015 at this time in order to trade off the popularity of the 2015
28 Annual GRAMMY Nominees Album.

1 28. In another clear attempt to trade off the popularity of The Recording
2 Academy's Annual GRAMMY Nominees Album, Power Music's GRAMMY
3 Tribute Workout Mix 2015 almost exclusively contains track titles that are contained
4 on The Recording Academy's 2015 Annual GRAMMY Nominees Album.

5 29. Specifically, ten of the fourteen songs on the Power Music's GRAMMY
6 Tribute Workout Mix 2015 are the same title songs that appeared on the Annual
7 GRAMMY Nominees Album released in 2015.

8 30. Specifically, Power Music's GRAMMY Tribute Workout Mix 2015
9 contains the following songs, the first ten of which also appear on the 2015 Annual
10 GRAMMY Nominees Album:

11 Shake It Off

12 Fancy

13 All About That Bass

14 Dark Horse

15 Chandelier

16 All of Me

17 Take Me to Church

18 Drunk in Love

19 Stay with Me

20 Happy

21 Rather Be

22 Waves

23 Bang Bang

24 Let It Go

25 31. However, (without informing consumers) none of the sound recordings
26 on Power Music's GRAMMY Tribute Workout Mix 2015 are the chart-topping
27 sound recordings popular with consumers nationwide. Rather, while the musical
28

1 composition and lyrics of the songs on Power Music's album appear to be the same as
2 the popularized hits, the sound recordings feature unknown artists.

3 32. Thus, Power Music's GRAMMY Tribute albums are mere imposters for
4 the Annual GRAMMY Nominees Album.

5 33. The addition of the word "tribute" in the title of the album is not
6 sufficient to notify a consumer that the album is not a "GRAMMY" album and that
7 the tracks on Power Music's albums are not the actual GRAMMY-nominated hits.

8 34. Instead, the words "Grammy tribute" are likely to suggest to a consumer
9 that the album is a "tribute" produced or released by The Recording Academy itself,
10 particularly given that The Recording Academy is known to present tributes to
11 popular recording artists.

12 35. In the past two years alone, The Recording Academy and its affiliates
13 have presented three tribute concerts, celebrating the work of Stevie Wonder, Bruce
14 Springsteen and The Beatles.

15 36. Considering that The Recording Academy is an organization which itself
16 honors musical excellence through tributes, and not a recording artist with a body of
17 work to which tributes are given, the use of the word "tribute" in conjunction with the
18 mark GRAMMY on the cover of Defendant's product is not sufficient to dispel
19 confusion but rather will exacerbate the likelihood of confusion.

20 37. Given the prominent placement of the GRAMMY mark, the timing of
21 the album's release, the similarity in the tracks to those on the Annual GRAMMY
22 Nominees Album, and The Recording Academy's presentation of tributes to
23 performing artists, The Recording Academy's consumers are likely to mistakenly
24 believe that (1) Defendant's GRAMMY Tribute albums originate from, are affiliated
25 with, sponsored by, approved by, or associated with The Recording Academy; (2)
26 Defendant's GRAMMY Tribute albums are The Recording Academy's Annual
27 GRAMMY Nominees Album; and/or (3) that the sound recordings the consumer is
28

1 purchasing on Defendant's GRAMMY Tribute albums are the chart topping hits
2 nominated for that year's GRAMMY Awards, when in fact they are not.

3 38. Indeed, upon information and belief, Defendant's use of the GRAMMY
4 mark has no purpose other than to confuse consumers and to profit from the goodwill
5 and consumer recognition associated with The Recording Academy and its
6 GRAMMY trademark.

7 **Defendant's Continued, Willful Infringement**

8 39. On or about July 6, 2015, counsel for The Recording Academy put
9 Power Music on notice that its "GRAMMY Tribute Workout Mix 2015" infringes
10 The Recording Academy's rights in the GRAMMY mark.

11 40. On or about July 7, 2015, Defendant responded to The Recording
12 Academy's counsel, denying that the GRAMMY Tribute Workout Mix 2015
13 infringes The Recording Academy's GRAMMY trademark and refusing to cease
14 their unlawful conduct.

15 41. Despite being put on notice, Defendant continues to directly infringe
16 The Recording Academy's trademark.

17 42. On July 14, 2015, The Recording Academy's counsel informed
18 Defendant that he would forward the e-mails regarding Defendant's unlawful use of
19 the GRAMMY trademark to The Recording Academy's litigation counsel.

20 43. Defendant's failure to comply with The Recording Academy's demands
21 demonstrates a deliberate intent to continue to wrongfully compete with The
22 Recording Academy and to willfully infringe The Recording Academy's rights in the
23 GRAMMY trademark.

24 44. Defendant's unlawful activities are irreparably injuring The Recording
25 Academy, and will continue to do so unless and until haled by this Court. The
26 Recording Academy seeks permanent injunctive relief, disgorgement of profits made
27 by Defendant on the sale of the "GRAMMY Tribute" albums, including but not
28 limited to "GRAMMY Tribute Workout Mix 2015," "GRAMMY Tribute Workout

Mix 2014,” and “GRAMMY Tribute Workout Mix 2013,” treble damages based on Defendant’s willful conduct, punitive damages and reasonable attorneys’ fees.

COUNT I

TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114

45. The Recording Academy repeats and realleges every allegation contained in paragraphs 1-44 as though fully set forth herein.

46. The GRAMMY trademark is an inherently distinctive, strong, valid, and protectable trademark owned by The Recording Academy.

47. Defendant is infringing The Recording Academy’s registered trademark in connection with its marketing and sale of the GRAMMY Tribute albums, including among others the “GRAMMY Tribute Workout Mix 2015,” “GRAMMY Tribute Workout Mix 2014,” and “GRAMMY Tribute Workout Mix 2013” albums.

48. Defendant’s use of the GRAMMY trademark in connection with its products is likely to cause confusion, mistake, or deception as to the source or sponsorship of the products and/or is likely to lead the consuming public to believe that The Recording Academy has authorized, approved, or somehow sponsored Defendant’s products.

49. Defendant’s display or use of the GRAMMY trademark is and has been without the consent or authorization of The Recording Academy and for commercial purposes.

50. The actions of Defendant described above and specifically, without limitation, Defendant’s use of The Recording Academy’s GRAMMY trademark on their products constitutes trademark infringement in violation of 15 U.S.C. § 1114.

51. Defendant has been, and will continue to be, damaged and irreparably harmed by the actions of Defendant, which will continue unless Defendant is enjoined by this Court. The Recording Academy has no adequate remedy at law in that the amount of damage to The Recording Academy’s reputation and the diminution of the goodwill of the GRAMMY trademark is difficult to ascertain with specificity. The

1 Recording Academy is therefore entitled to injunctive relief pursuant to 15 U.S.C. §
2 1116.

3 52. Defendant is entitled to recover damages in an amount to be determined
4 at trial and the profits made by Defendant on the sales of its “GRAMMY Tribute”
5 albums, including among others the “GRAMMY Tribute Workout Mix 2015,”
6 “GRAMMY Tribute Workout Mix 2014,” and “GRAMMY Tribute Workout Mix
7 2013” albums. Furthermore, The Recording Academy is informed and believes, and
8 on that basis alleges, that the actions of Defendant were undertaken willfully and with
9 the intention of causing confusion, mistake, and deception, making this an
10 exceptional case entitling The Recording Academy to recover treble damages,
11 reasonable attorneys’ fees, and costs pursuant to Section 35 of the Lanham Act, 15
12 U.S.C. § 1117.

13 **COUNT II**

14 **UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(a)(1)(A)**

15 53. The Recording Academy repeats and realleges every allegation
16 contained in paragraphs 1-44 as though fully set forth herein.

17 54. Defendant has used in commerce and without The Recording
18 Academy’s authorization or consent the GRAMMY trademark in connection with
19 Defendant’s marketing and sale of GRAMMY Tribute albums, including among
20 others the “GRAMMY Tribute Workout Mix 2015,” “GRAMMY Tribute Workout
21 Mix 2014,” and “GRAMMY Tribute Workout Mix 2013” albums.

22 55. Defendant’s actions as described herein are likely to cause confusion and
23 deception among the consuming public and are likely to lead the consuming public to
24 believe that The Recording Academy has authorized, approved, or somehow
25 sponsored Defendant’s marketing and sale of GRAMMY Tribute albums, including
26 among others the “GRAMMY Tribute Workout Mix 2015,” “GRAMMY Tribute
27 Workout Mix 2014,” and “GRAMMY Tribute Workout Mix 2013” albums.
28

56. Defendant's actions constitute false association, false designation of origin, and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

57. The Recording Academy has been, and will continue to be, damaged and irreparably harmed by the actions of Defendant, which will continue unless Defendant is enjoined by this Court. The Recording Academy has no adequate remedy at law in that the amount of damage to The Recording Academy's reputation and the diminution of the goodwill of the GRAMMY trademark is difficult to ascertain with specificity. The Recording Academy is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

58. The Recording Academy is entitled to recover damages in an amount to be determined at trial and the profits made by Defendant on the sales of GRAMMY Tribute albums, including among others the “GRAMMY Tribute Workout Mix 2015,” “GRAMMY Tribute Workout Mix 2014,” and “GRAMMY Tribute Workout Mix 2013” albums. Furthermore, The Recording Academy is informed and believes, and on that basis alleges, that the actions of Defendant were undertaken willfully and with the intention of causing confusion, mistake, and deception, making this an exceptional case entitling The Recording Academy to recover treble damages, reasonable attorneys’ fees, and costs pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, as well as prejudgment interest.

COUNT III

FALSE ADVERTISING IN VIOLATION OF 15 U.S.C. § 1125(a)(1)(B)

59. The Recording Academy repeats and realleges every allegation contained in paragraphs 1-44 as though fully set forth herein.

60. Defendant has used in commerce and without The Recording Academy's authorization or consent the GRAMMY trademark in connection with Defendant's advertising and promotion of GRAMMY Tribute albums, including among others the "GRAMMY Tribute Workout Mix 2015," "GRAMMY Tribute Workout Mix 2014," and "GRAMMY Tribute Workout Mix 2013" albums.

1 61. Defendant's actions as described herein misrepresent the nature,
2 characteristics, and qualities of the Defendant's albums.

3 62. Defendant's actions constitute false advertising in violation of 15 U.S.C.
4 § 1125(a)(1)(B).

5 63. The Recording Academy has been, and will continue to be, damaged and
6 irreparably harmed by the actions of Defendant, which will continue unless
7 Defendant is enjoined by this Court. The Recording Academy has no adequate
8 remedy at law in that the amount of damage to The Recording Academy's reputation
9 and the diminution of the goodwill of the GRAMMY trademark is difficult to
10 ascertain with specificity. The Recording Academy is therefore entitled to injunctive
11 relief pursuant to 15 U.S.C. § 1116.

12 64. The Recording Academy is entitled to recover damages in an amount to
13 be determined at trial and the profits made by Defendant on the sales of GRAMMY
14 Tribute albums, including among others the "GRAMMY Tribute Workout Mix
15 2015," "GRAMMY Tribute Workout Mix 2014," and "GRAMMY Tribute Workout
16 Mix 2013" albums. Furthermore, The Recording Academy is informed and believes,
17 and on that basis alleges, that the actions of Defendant were undertaken willfully and
18 with the intention of causing confusion, mistake, and deception, making this an
19 exceptional case entitling The Recording Academy to recover treble damages,
20 reasonable attorneys' fees, and costs pursuant to Section 35 of the Lanham Act, 15
21 U.S.C. § 1117, as well as prejudgment interest.

22 **COUNT IV**

23 **TRADEMARK DILUTION IN VIOLATION OF 15 U.S.C. § 1125(c)**

24 65. The Recording Academy repeats and realleges every allegation
25 contained in paragraphs 1-44 as though fully set forth herein.

26 66. The Recording Academy is the owner of the GRAMMY trademark,
27 which is and has become famous by virtue of, *inter alia*, its strong brand recognition,
28 extent of use, extent of advertising, publicity, and nationwide usage.

1 67. Defendant's foregoing willful and bad faith acts dilute and tarnish, and
2 are likely to and will continue to dilute and tarnish, the distinctive qualities of The
3 Recording Academy's trademark in violation of Section 43 of the Lanham Act, 15
4 U.S.C. 1125(c).

5 68. Defendant's use of the GRAMMY trademark began after the
6 GRAMMY trademark became famous.

7 69. Defendant's acts described above have and will continue to impair the
8 GRAMMY mark's ability to act as distinctive identifiers of source or origin, tarnish
9 the GRAMMY mark and harm its reputation, and diminish the integrity of the
10 products with which the GRAMMY mark is associated.

11 70. The Recording Academy has been, and will continue to be, damaged and
12 irreparably harmed by the actions of Defendant, which will continue unless
13 Defendant is enjoined by this Court. The Recording Academy has no adequate
14 remedy at law in that the amount of damage to The Recording Academy's reputation
15 and the diminution of the goodwill of the GRAMMY trademark is difficult to
16 ascertain with specificity. The Recording Academy is therefore entitled to injunctive
17 relief pursuant to 15 U.S.C. § 1116.

18 71. The Recording Academy is entitled to recover damages in an amount to
19 be determined at trial and the profits made by Defendant on the sales of GRAMMY
20 Tribute albums, including among others the "GRAMMY Tribute Workout Mix
21 2015," "GRAMMY Tribute Workout Mix 2014," and "GRAMMY Tribute Workout
22 Mix 2013" albums. Furthermore, The Recording Academy is informed and believes,
23 and on that basis alleges, that the actions of Defendant were undertaken willfully and
24 with the intention of causing confusion, mistake, and deception, making this an
25 exceptional case entitling The Recording Academy to recover treble damages,
26 reasonable attorneys' fees, and costs pursuant to Section 35 of the Lanham Act, 15
27 U.S.C. § 1117, as well as prejudgment interest.

COUNT V

COMMON LAW TRADEMARK INFRINGEMENT

72. The Recording Academy repeats and realleges every allegation contained in paragraphs 1-44 as though fully set forth herein.

73. Defendant's conduct, as described above, concerning Defendant's "GRAMMY Tribute" albums, including among others the "GRAMMY Tribute Workout Mix 2015," "GRAMMY Tribute Workout Mix 2014," and "GRAMMY Tribute Workout Mix 2013" albums, constitutes trademark infringement in violation of the common law of California.

74. As a direct and proximate result of Defendants' conduct alleged herein, The Recording Academy has suffered injury and has lost money or property, causing damage to The Recording Academy in an amount to be determined at trial.

75. Defendant's acts have caused, and will continue to cause, irreparable injury to The Recording Academy and its business, reputation, and trademarks, unless and until Defendant is permanently enjoined.

COUNT VI

TRADEMARK DILUTION

IN VIOLATION OF CAL. BUS. & PROF. CODE § 14247

76. The Recording Academy repeats and realleges every allegation contained in paragraphs 1-44 as though fully set forth herein.

77. The Recording Academy is the owner of the GRAMMY trademark, which is famous and distinctive within the meaning of Cal. Bus. & Prof. Code §14247.

78. Defendant's use of the GRAMMY trademark began after the GRAMMY trademark became famous.

79. Defendant's continued use of the GRAMMY trademark is likely to cause dilution of the distinctive quality of The Recording Academy's famous GRAMMY trademark and injury to Defendant's business and reputation.

1 Recording Academy's business in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
 2 *seq.*

3 85. Defendant's acts have caused, and will continue to cause, irreparable
 4 injury to The Recording Academy and its business, reputation, and trademarks, unless
 5 and until Defendant is permanently enjoined.

6 86. As a direct and proximate result of Defendants' conduct alleged herein,
 7 Defendant has been unjustly enriched and should be ordered to disgorge any and all
 8 profits earned as a result of such unfair, unlawful and/or fraudulent conduct.

9 **COUNT VIII**

10 **FALSE ADVERTISING**

11 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

12 87. The Recording Academy repeats and realleges every allegation
 13 contained in paragraphs 1-44 as though fully set forth herein.

14 88. Defendant's conduct, as described above, concerning Defendant's
 15 "GRAMMY Tribute" albums, including among others the "GRAMMY Tribute
 16 Workout Mix 2015," "GRAMMY Tribute Workout Mix 2014," and "GRAMMY
 17 Tribute Workout Mix 2013" albums, constitutes the dissemination of untrue and
 18 misleading statements, which Defendant knows, or should have known by the
 19 exercise of reasonable care, are untrue or misleading.

20 89. Defendant's conduct as described above is in violation of Cal. Bus. &
 21 Prof. Code §§ 17500, *et seq.*

22 90. As a direct and proximate result of Defendants' conduct alleged herein,
 23 The Recording Academy has suffered injury and has lost money or property as a
 24 result of such untrue or misleading statements, causing damage to The Recording
 25 Academy in an amount to be determined at trial.

26 91. Defendant's acts have caused, and will continue to cause, irreparable
 27 injury to The Recording Academy and its business, reputation, and trademarks, unless
 28 and until Defendant is permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, The Recording Academy prays for judgment as follows:

1. Temporarily, preliminarily and permanently enjoining Power Music, Inc., its officers, agents, servants and employees, and all persons in active concert and participation with it, from:

(a) Using the GRAMMY mark in connection with the marketing, promotion, advertising, sale, or distribution of any of its music products; and

(b) Any acts of infringement of The Recording Academy's GRAMMY trademark.

2. Directing that Defendant be required to recall from the trade and all distribution channels any and all products, packaging, advertising and promotional materials bearing the infringing and diluting marks;

3. Directing that Defendant be required to file with the Court and serve on The Recording Academy, within thirty (30) days after entry of a final injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

4. Directing that Defendant account to The Recording Academy for all gains, profits, and advantages derived from their wrongful conduct described herein;

5. Directing that Defendant pay The Recording Academy such damages as it has sustained as a consequence of Defendant's wrongful conduct described herein, with the precise amount to be determined at trial;

6. Directing that Defendant pay The Recording Academy punitive damages, in an amount to be determined at trial, as a result of Defendant's malicious, wanton and/or oppressive conduct pursuant to Cal. Civ. Code § 3294;

7. Directing that Defendant pay the Recording Academy three times all of Plaintiffs' damages suffered as a result of Defendant's willful, intentional, and deliberate acts in violation of the Lanham Act, as well as The Recording Academy's costs, attorneys' fees, and expenses in this suit under Cal. Bus. & Prof. Code §§ 14247

1 and 14250 and because this is an “exceptional case” under Section 35 of the Lanham
2 Act, 15 U.S.C. § 1117;

3 8. Directing that defendants pay to The Recording Academy pre- and
4 post-judgment interest;

5 9. Directing such other action as the Court may deem just and proper to
6 prevent the trade and public from deriving the mistaken impression that any products
7 or services offered, advertised, or promoted by or on behalf of Defendants are
8 authorized by or affiliated with The Recording Academy or related any way to The
9 Recording Academy’s products or services; and

10 10. Granting The Recording Academy such other and further relief as the
11 Court may deem just and proper.

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13 DATED: September 3, 2015

Sandra A. Crawshaw-Sparks
Jennifer L. Jones
Tracey L. Silver
PROSKAUER ROSE LLP

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17 /s/ Jennifer L. Jones
18 Jennifer L. Jones

19 Attorneys for Plaintiff
20 National Academy of Recording Arts &
21 Sciences, Inc.
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DEMAND FOR JURY TRIAL

Plaintiff National Academy of Recording Arts & Sciences, Inc. hereby
demands a trial by jury.

DATED: September 3, 2015

Sandra A. Crawshaw-Sparks
Jennifer L. Jones
Tracey L. Silver
PROSKAUER ROSE LLP

/s/ Jennifer L. Jones
Jennifer L. Jones

Attorneys for Plaintiff
National Academy of Recording Arts &
Sciences, Inc.